IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 33 of 1999.

Judgement reserved on: 18.5.2007

Date of decision: June 25, 2007

H.P. State Electricity Board & anr. ….. Appellants.

Vs.

B.L.Behl & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. Shrawan Dogra, Advocate.

For the Respondents : Mr. B.K.Malhotra, Advocate, for respondent No.1.
None for other respondents.

Kuldip Singh, Judge.

The defendants No. 1 and 2, are in appeal against the judgement and decree, dated 13.7.1998, passed by learned Additional District Judge, Shimla, in Civil Suit No. 4-S/1 of 95/89, decreeing the suit of the plaintiff for Rs. 1,63,000/-, alongwith costs, pendente-lite as well as future interest at the rate of 6% per annum, from the date of the institution of the suit, i.e. 31.7.1989 till realization of the entire decretal amount. The parties are referred in the same manner, as in the impugned judgement and decree.

2. The facts in brief are that plaintiff filed a suit for recovery of Rs. 2,00,100/-, against defendants No. 1 and 2, on account of loss

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Whether the reporters of the local papers may be allowed to see the Judgment?

caused to him due to fire which broke out in building “Mount View”, also known as “Kapoor House”, situate at Sanjauli, Tehsil and District Shimla on 22.11.1988 due to negligence on the part of servants of defendants No. 1 and 2. Defendants No. 3 to 5, owners of the building were impleaded as proforma defendants.

3. The plaintiff was inducted as tenant by proforma defendants No. 3 to 5, on 17.4.1987, in one set. The defendants No. 1 and 2, were also tenants of proforma defendants in another portion of the same building. The plaintiff was working as Librarian in Government College for Boys and he had all modern amenities in his tenanted premises. In addition to this, the plaintiff had cash and jewellery of his wife.

4. On 22.11.1988, at about 7.15 p.m., the plaintiff and his son saw smoke coming out from one of the rooms under the occupation of defendants No.1 and 2. The plaintiff and other persons rushed towards the tenanted premises of defendants No. 1 and 2 in the building and they confirmed that the smoke was coming out from the rented premises of defendants No. 1 and 2. In the meantime, fire engulfed the premises of the plaintiff and nothing could be saved except two LPG cylinders. All the belongings of the plaintiff and his family were destroyed in the fire. Later on, fire was brought under control. The police visited the spot. A list of destroyed articles was prepared next day by Professor B.K. Bhardwaj, a family friend of plaintiff. The plaintiff and his family members were in shock, therefore, jewellery could not be shown in the list of articles. The fire

took place due to negligence and carelessness on the part of the staff of defendants No. 1 and 2.

5. The plaintiff has suffered a loss of Rs. 1,85,000/- on account of destruction of household and other articles in the fire. He has also claimed Rs. 30,000/- on account of shock and suffering caused to him, as a result of fire. The plaintiff has claimed interest at the rate of 18% per annum from the date of the incident till the payment of the decretal amount. The plaintiff, in all has suffered loss of Rs. 2,40,000/- under various heads, but he restricted his claim to Rs. 2,00,100/- in the plaint.

6. The suit was contested by defendants No. 1 and 2, by filing a written statement. It has been admitted that the plaintiff was residing in a premises of the building above the premises occupied by defendants No. 1 and 2. It has been denied that fire originated from the premises of defendants No. 1 and 2. It has been denied that it was not possible for the plaintiff to remove his household belongings. The suit has been filed at the instance of D.N. Kapoor, who had already instituted a suit for recovery of damages against defendants No. 1 and 2. It has been denied that the articles mentioned in the list were destroyed in the fire. It has been denied that fire broke out in the building due to the negligence and carelessness on the part of the staff of defendants No. 1 and 2. It is denied that plaintiff has suffered loss, as alleged in the plaint. The defendants No. 1 and 2, prayed for dismissal of the suit.

7. The following issues were framed:-

1. Whether the building in question was gutted in fire due to the negligence of the defendants, as alleged? OPP.

2. Whether the defendants and their employees had been using the premises in question with all care and precautions? OPD.

3. Whether the suit in question has been filed by the plaintiff in collusion with the landlords/ owners of the building? OPD.

4. In case issue No. 1 is decided in the affirmative, what loss if any has been suffered by the plaintiff? OPP.

5. Whether the plaintiff is entitled to the suit amount as damages or any other amount from the defendants? OPP.

6. Relief.

8. The learned Additional District Judge has returned findings on issue No. 1 in favour of the plaintiff. The issues No. 2 and 3, have been decided against the defendants No. 1, 2 and under issues No. 4 and 5, it has been held that plaintiff is entitled to Rs. 1,63,000/- and ultimately, suit has been decreed, as noticed above. The defendants No. 1 and 2, are in appeal.

9. I have heard the learned counsel for the parties and have also gone through the record.

10. The learned counsel for defendants No. 1 and 2 has submitted that impugned judgement and decree are not based on legal evidence, rather the suit has been decreed on surmises and

conjectures. It has been urged that plaintiff has failed to prove that fire broke out due to the negligence on the part of the staff of defendants No. 1 and 2. The plaintiff has failed to substantiate his claim to the extent of Rs. 1,63,000/-. The plaintiff has proved only loss to the extent of Rs. 40,000/-. Learned counsel for the plaintiff has supported the impugned judgement and decree.

11. PW 1 B.L.Behal, has deposed that in Kapoor House, he was tenant since April, 1987 and his premises consisted of four rooms. There was office of S.D.O. Electricity below his floor in the same building. There was wooden floor in his two rooms above the office of Electricity Board. On 22.11.1988, at about 7.15 p.m., fire broke out in the building, which started from the premises occupied by the Board. The office was closed and no employee of the Board was present nor Chowkidar of the Board was there. Due to intense smoke, except two LPG Cylinders, nothing could be taken out from the rented premises and in his presence his tenanted premises was destroyed in fire. He could not save his any article. He has been working in College Library since 1970, his wife is also in service. They used to save about Rs. 2500 to Rs.3000 and from this savings, they had purchased modern amenities such as Television, refrigerator, steel almirahs, mixi, washing machine etc. All these articles were lying in the rented premises. A list Ex. PW 1/A of destroyed articles was prepared by Mr. B.K.Bhardwaj, a family friend. In that list, the jewellery could not be shown as his wife was in shock due to fire. The fire broke out due to negligence of the Board. The employees were using heaters, stoves and Angithies. In the fire, he

suffered a loss of about Rs. 2,40,000/-. In cross-examination, he has deposed that he had verified the purchase of goods from the dealers. He could not tell the cost of some of the items. It was suggested to him that the articles mentioned in list Ex. PW 1/A were not burnt in the fire nor their value was correct.

12. PW 2 M.K.Malhotra, has stated that he was occupying a set close to the set of PW 1 and fire broke out in Kapoor House on 22.11.1988 at 7.15 p.m. The smoke was coming out from the ventilators of the office of Electricity Board. There was no Chowkidar of the Board at that time. They smashed the door of the premises of Power Board, he found one on heater in the office. The household articles of PW 1 were destroyed in the fire.

13. PW 3 Updesh Kumar is the brother in law of PW 1 and has stated that at the time of marriage of his sister with PW 1 they had given gold jewellery ten to fifteen tolas to the wife of PW 1. PW 4 B.K.Bhardwaj, has stated that at the instance of the plaintiff, he had prepared list Ex. PW 1/A. He used to visit the house of PW 1, who was possessing goods/ articles mentioned in the list Ex. PW 1/A. In cross-examination, he was suggested that PW 1 was not in possession of articles mentioned in Ex. PW 1/A.

14. PW 5 Lalit Kumar has stated that he was a tenant in the house of D.N. Kapoor, fire broke out on 22.11.1988, at 7 p.m. in that building. He rang up the fire brigade. The set of B.L.Behal was adjacent to his set. PW 1 was in possession of modern amenities. He could not say whether plaintiff could save anything from the fire or not.

15. PW 6 Raj Kumar Malhotra, has stated that house of PW 1 was gutted in fire on 22.11.1988 and he could not save his household articles. PW 7 Karamjit Singh, has proved FIR Ex. PW 7/A. PW 8 S.L. Vaidya, has stated that in November, 1988, he was working as Assistant Commissioner. In November, 1988, he visited PW 5 Lalit Kapoor, who had his house adjacent to the house of plaintiff B.L. Behal. The plaintiff is his cousin. He had visited the premises of plaintiff on that date at about 7 p.m. In the meantime, fire broke out in the building and he found that lower portion of the building, which was under the tenancy of H.P.S.E.B. was under fire. The plaintiff could not save anything from his premises. In cross-examination, he has deposed that he could not give details of loss of articles of the plaintiff.

16. PW 9 Dipesh has stated that his premises was near to the premises of the plaintiff, which was gutted in fire on 22.11.1988 at about 7 p.m. He saw smoke coming out from the premises of H.P.S.E.B. The electric heaters in the premises of H.P.S.E.B were on and had caused fire. PW 10 D.N. Kapoor, has stated that building, which was gutted in fire was owned by Smt. Veena Devi etc. Smt. Veena Devi is his mother, his wife Smt. Raj Kumari was also one of the owners of the building. On 22.11.1988, at about 7.15 p.m., the plaintiff visited his premises and told him that premises in possession of the Board was suspected to be under fire as smoke was coming out from that premises. The employees of the Board were using heating points, which were not approved. He tendered in evidence Ex. PW 10/A and complaints Ex. PW 10/B to Ex. PW 10/E. The

Board employees were also using charcoal stoves in the premises. The fire took place due to the negligence of the employees of the Board.

17. DW 1 Brij Mohan Sood, has deposed that in 1988, he was posted as Junior Engineer, Sanjauli Electrical Section under the Electrical Sub Division. On 22.11.1988, he was informed by his Assistant Lineman that fire broke out in the building in which Sub Divisional Office was housed. He admitted that in winter heaters were being used in the office. He has denied that there was no Chowkidar in the office. DW 2 Smt. Janki Devi, has stated that he was posted as L.D.C. in the office of HPSEB Sub-Division, Sanjauli. On 22.11.1988, in the said office, there was only one heater, which was being used for making tea by the Peon. There were 10-15 employees in the said office. She has stated that there was no Chowkidar in the office. She denied that the fire took place on 22.11.1988, as a result of the negligence of the officials of HPSEB.

18. DW 3 Smt. Renu Sood, has stated that on 22.11.1988, she was posted as daily wage clerk in the office of HPSEB Sub Division, Sanjauli. There was one heating point in the said office. The staff was not provided any heater. The heater was used for the purpose of preparing the tea. There was no Chowkidar in the office. DW 4 Smt. Shanti Devi, has stated that on 22.11.1988, she was working as Peon in the Electrical Sub Division, Sanjauli. On that date, after the officials had left, she checked electric heating points, switched them off and then closed the office. Shubh Lata, UDC had also checked the heating points and lights.

19. DW 5 Smt. Shubh Lata, has stated that in 1988, she was working as SDC in Sanjauli Sub Division of Board. On 22.11.1988, she checked all heating and lighting points and switched them off and thereafter got the office locked from the office peon and thereafter left for her home. The electricity heating points were provided by the owner. DW 6 Smt. Anjana Sharma, has stated that in November, 1988, she was working on daily wages in Sanjauli Sub Division HPSEB. There was only one heater provided by the office for preparing tea and that was switched off before closing the office.

20. DW 7 Ram Kishan, has stated that he worked as LDC in Sanjauli Sub Division of HPSEB from 1985 to 1989. On 22.11.1988, DW 5 had checked all the heating points and got the office closed. The owner of the building never asked them not to use the heaters. DW 8 Dharam Parkash, has stated that he was working as LDC in Sanjauli Sub Division of HPSEB. On 22.11.1988, he was present in the office, which was locked by the office peon at 5.00 p.m. Smt. Shubh Lata before leaving the office, checked all the heating and lighting points in the office and switched them off before locking the office. In cross-examination, he has stated that on 22.11.1988, they had not started using heater or stoves. They started using coal heating in January, 1989. DW 9 Mansa Ram, has stated that he was working as daily wage T-Mate in the office of HPSEB Sub Division, Sanjauli in the year 1988. On 22.11.1988, he was posted at complaint room, Sanjauli Chowk. At about 7 p.m. Mr. Kapoor came to him and asked for the keys of the office. When he went with him on his scooter and reached the spot, the whole building was under fire.

21. DW 10 Shyam Lal Modgil, has stated that on 22.11.1988, he was posted as LDC in the office of HPSEB Sub Division, Sanjauli. The Chowkidar was on leave on that date. There was only one heating point, which was being used for preparing the tea.

22. DW 11 Ajit Singh Jaswal, has stated that he was posted as UDC (Revenue) in HPSEB Sub Division, Sanjauli from May, 1984 to January, 1989. The heater was not in use in that office, but Bukhari was in use. This is the evidence led by the parties.

23. There is overwhelming evidence on record that fire started from the tenanted premises under the occupation of defendants No.1 and 2 which was an office. The fire soon spread to remaining part of the building including the premises of the plaintiff. Defendants No.1 and 2 being occupier of their premises have failed to explain the circumstances leading to the fire. In ***H & N Emanuel Ltd. Versus Greater London Council and another [1971 (2) All England Law Reports 835,*** it has been held as under:-

> "It is my opinion that the occupier of a house or land is liable for the escape of fire which is due to the negligence not only of his servants, but also of his independent contractors and of his guests, and of anyone who is there with his leave or licence."

The occupier of the premises, from which fire started, is required to explain the cause of the fire. In absence of such explanation it can be safely presumed that the fire was caused in the premises of defendants No.1 and 2 by the acts or omissions of defendants No.1

and 2. The fire ultimately destroyed the tenanted premises of the plaintiff which was situated immediately above the premises of defendants No.1 and 2. The learned District Judge has rightly come to the conclusion that the fire was caused due to the negligence of defendants No.1 and 2 which caused damage in the tenanted premises of plaintiff. The findings of learned District Judge regarding the cause on fire and negligence of defendants No.1 and 2 for causing the fire are confirmed.

24. The most contentious issue is what was damaged due to fire in the premises of plaintiff and plaintiff is entitled to how much compensation as damages. The theory of damages is that they are a compensation for the injuries sustained, in other words damages suffered should be such which will put the injured in the same position as he would have been if he had not sustained the injury for which he is getting the damages.

25. In the present case, PW-4 B.K.Bhardwaj has prepared the list of articles of plaintiff destroyed in the fire. This list has been referred to by plaintiff in his deposition as PW-1. In cross examination, PW-1 has stated that he had got the list prepared from his memory. He had verified the purchase of goods from the dealers. In order to support the prices of various items mentioned in Ext.PW-1/A he has further stated in his cross examination that he could even now tell the cost of some of the items, the T.V. was of Rs.5000/- approximately, Tape-recorder Rs.1100/- and Fridge Rs.4200/-, he had purchased steel almirah for Rs.600/- from M/s.Ashoka Steel. It is, thus, clear that in Ext.PW-1/A the plaintiff has given value of

different items when these items were purchased by him. It is not clear from the list Ext.PW-1/A when the items mentioned in the list were purchased. The items mentioned in the list were used by the plaintiff and his family. No doubt, the items mentioned in the list are of common use in ordinary middle class family but even then the plaintiff is at the most entitled to loss he has sustained in the fire and nothing more. The plaintiff is entitled to depreciated value of the items mentioned in the list and not the value of the items when those were purchased. The compensation should be equivalent to the cost of restoration of the goods destroyed in fire. The cost of restoration in any case will not be the value of goods when those were purchased by the plaintiff. In ***[AIR 1965 SC 1314],*** in Para-4, it has been held as under:-

> "Therefore, the respondent – State was entitled to compensation to the extent necessary to restore the jetty to its original condition. If this is to be called restitution, the corporation as well as a private person would be entitled to it. But if by restitution, the High Court meant complete reconstruction irrespective of the damage done, then neither a private person nor a corporation or a trustee is entitled to complete reconstruction irrespective of the damage done."

26. The loss due to fire should not be used by plaintiff for undue enrichment through suit for damages. The damages should not be more than the actual loss. In the present case, the difficulty is that depreciated cost of the articles destroyed in the fire has not been established. The fact remains that household articles of

the plaintiff were destroyed in the fire which took place way back on 22.11.1988 and already more than 18 years are over. In my opinion, if 20% amount on account of depreciation is deducted from the value of articles given by the plaintiff himself that will be just compensation to the plaintiff on account of damages suffered by him due to fire. The learned District Judge has assessed the value of articles destroyed in the fire Rs.1,63,000/-. After deducting 20% from this amount, the depreciated value of the articles destroyed in fire comes to Rs.1,63,000-Rs.32,600=Rs.1,30,400/-). The plaintiff is, thus, entitled to Rs.1,30,400/- along with interest at the rate of 6% per annum from the date of institution of the suit till realization.

27. In view of the above discussion, the appeal is partly allowed. A decree of Rs.1,30,400/- is passed in favour of the plaintiff and against defendants No.1 and 2 jointly and severally along with 6% interest per annum on Rs.1,30,400/- from the date of institution till realization. The defendants No.1 and 2 shall pay proportionate costs to plaintiff throughout.

June 25, 2007 **(Kuldip Singh)**
(*Hem/soni*) **Judge.**